Supreme Court, U.S.
FILED

991758 MAY 04 2000

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

DELAWARE RIVER PORT AUTHORITY,
Petitioner,

v.

FRATERNAL ORDER OF POLICE,
PENN-JERSEY LODGE 30, and JOSEPH VENA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF
NEW JERSEY,
APPELLATE DIVISION

PETITION FOR WRIT OF CERTIORARI

OF COUNSEL:

RICHARD L. BROWN
General Counsel
Delaware River Port Authority
One Port Center
2 Riverside Drive
Camden, NJ 08101

WILLIAM H. ROBERTS
(Counsel of Record)
PETER A. GOLD
SAMUEL M. FIRST
BLANK ROME COMISKY &
MCCAULEY LLP

One Logan Square
Philadelphia, PA 19103
(215) 569-5632
Attorneys for Petitioner,
Delaware River
Port Authority

PACKARD PRESS® / APPELLATE DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

138 pp

QUESTIONS PRESENTED

1. By requiring the Delaware River Port Authority ("DRPA") to submit labor disputes over wages and other issues to binding interest arbitration under a court-created arbitration procedure before a court-appointed arbitrator, did the New Jersey court improperly dispense with and misconstrue the standard interstate compact amendment requirement, in Article IV of the Pennsylvania-New Jersey federal compact creating the DRPA, of "action of either State concurred in by the legislation of the other" when, instead, it simply "implied" agreement between Pennsylvania and New Jersey to amend the Compact from nothing more than "common policies" of the states, notwithstanding (a) that the court's determination is inconsistent with an express Compact provision that confers on the DRPA's Commissioners exclusive power "to fix and determine . . . duties and compensation" of its employees, and (b) that the Pennsylvania and New Jersey binding interest arbitration statutes, which the court found to embody a similar "public policy," neither mention nor by definition encompass the DRPA, and, as construed by Pennsylvania and New Jersey courts, concededly do not even otherwise apply to the DRPA?

2. In determining whether a common similar "policy" gleaned from respective state statutes of bi-state compact parties that do not by their terms specifically bring a bi-state compact entity within their scope may nonetheless be imposed on a bi-state compact entity, is the appropriate legal standard

(a) a legal standard that requires "a painstaking comparison" of laws of the creator-states to determine whether the states' legislative enactments are not only "substantially similar" and "parallel and complementary," but provide reciprocal legislative intent of agreement that the laws shall apply to the bi-state agency, as the courts of Pennsylvania and New York, as well as the lower federal courts in these states, have held, or

(b) the novel "implied amendment" legal standard adopted by the New Jersey courts, which requires no more than that a court divine in the respective compact

states' statutes of similar subject matter some common "basic public policy" – such as one generally "favoring arbitration," or one that "public employees are entitled to engage in collective negotiations with their employer," as in this case – as the sole basis for speculating that the states intend that specific provisions of state statutes apply to the compact entity, disregarding that (i) there are important differences in language, in scope, and in specific public policy of the two states' legislation, (ii) the implied amendment is contrary to powers expressly conferred by the compact, and (iii) there is no other direct or indirect evidence of legislative intent by either state to apply such statutory provisions to the compact entity?

3. Does the New Jersey court's determination below, that mere similarity in general "policy" between respective legislation of Pennsylvania and of New Jersey is a sufficient basis for imposing binding interest arbitration procedures on the DRPA, circumvent the standard compact amendment provisions, common to many interstate compacts, and violate the Compact Clause of the Constitution of the United States, Article I, § 10, cl. 3, by creating a *de facto* "implied amendment" that lacks the concurrence of the Pennsylvania and New Jersey legislatures?

4. By engrafting onto the DRPA Compact a hybrid, compulsory binding interest arbitration procedure for labor disputes that destroys the DRPA Commissioners' exclusive power thereunder "to fix and determine . . . " the duties and compensation of DRPA employees, and circumvents the New Jersey Governor's control by statutory veto power over DRPA actions, did the New Jersey court subordinate to state law express provisions of the DRPA Compact, "a law of the United States," under this Court's decisions in *Texas v. New Mexico,* 462 U.S. 554, 564 (1983); *Cuyler v. Adams,* 449 U.S. 433, 438 (1981), and thus violate the Supremacy Clause of the Constitution of the United States, Art. VI, clause 2, by ordering relief inconsistent with the Compact's express terms?

LISTING OF PARTIES TO THE PROCEEDING

Parties to the proceeding in the Supreme Court of New Jersey were:

Petitioner, the Delaware River Port Authority, a Congressionally approved bi-state instrumentality of Pennsylvania and New Jersey.

Respondents, the Fraternal Order of Police Penn-Jersey Lodge 30 ("FOP"), an unincorporated labor organization, which purports to represent certain police officers employed by the DRPA, and Joseph Vena, the FOP's former First Vice-President.

RULE 29.6 LISTING

The Delaware River Port Authority does not own any nonwholly owned subsidiaries. There is no parent or publicly held company owning 10% or more of Delaware River Port Authority stock.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LISTING OF PARTIES TO THE PROCEEDING iii

RULE 29.6 LISTING iii

TABLE OF AUTHORITIES vii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED 2

STATEMENT OF THE CASE 4

1. The Delaware River Port Authority 4

2. The Respondents, Fraternal Order of Police Penn-Jersey Lodge 30 and Vena 8

3. The Negotiations Following Expiration of the 1992 DRPA-FOP Collective Bargaining Agreement 8

4. Proceedings in the New Jersey Superior Court, Law Division 9

5. Proceedings in the New Jersey Superior Court, Appellate Division 10

REASONS FOR GRANTING THE WRIT 13

I. The Court Should Grant Certiorari to Settle an Important and Frequently Recurring Question of Federal Law Involving the Appropriate Legal Standard for Interpreting Compacts on Which the Courts of Pennsylvania, New Jersey, New York, and Delaware, and the Federal Courts of Pennsylvania, New York, and Maryland are Split 13

TABLE OF CONTENTS—*(Continued)*

Page

A. New Jersey Decisions Conflict with Controlling Decisions of New York, Pennsylvania and Delaware State Courts on the Propriety of the "Implied Amendment" Standard 15

1. New Jersey v. New York Law..... 16

2. New Jersey vs. Pennsylvania Law 17

3. New Jersey vs. Delaware Law 18

B. The New Jersey Rule Conflicts with Applicable Federal Court Precedent in the Affected States of New York and Pennsylvania on the "Implied Amendment" Standard..... 19

II. The New Jersey Courts' "Implied Amendment" to the DRPA Compact, a "Law of the United States," Violates the Supremacy Clause by Erroneously Engrafting Binding Arbitration Procedures that Conflict with, and Subordinate, Controlling Powers Conferred by the DRPA Compact 21

III. The Questions Are Important And Have Far-Reaching Practical Consequences 22

CONCLUSION..... 24

APPENDIX A:

Opinion of Superior Court of New Jersey, Appellate Division, filed July 22, 1999..... 1a

APPENDIX B:

Order of Superior Court of New Jersey, Law Division, filed February 17, 1998..... 16a

APPENDIX C:

Order of Superior Court of New Jersey, Law Division, filed December 19, 1997 ..... 18a

TABLE OF CONTENTS—*(Continued)*

Page

APPENDIX D:

Order of Superior Court of New Jersey, Law Division, filed November 21, 1997 ..... 20a

APPENDIX E:

Corrected Order of Supreme Court of New Jersey denying petition for certification, filed December 7, 1999 ..... 22a

APPENDIX F:

Public Resolution S.J. Res. 41 Chapter 258 - June 14, 1932, 47 Stat. 308 ..... 23a

Public Law 573 Chapter 922 - July 17, 1952, 66 Stat. 747 ..... 39a

Public Law 88-320 - June 13, 1964, 78 Stat. 215 ..... 55a

Public Law 102-544 - October 27, 1992, 106 Stat. 3576 ..... 66a

APPENDIX G:

Pennsylvania Collective Bargaining by Policemen or Firemen Act, 43 P.S.§§ 217.1 to .10 ..... 81a

APPENDIX H:

New Jersey Police and Fire Public Interest Arbitration Reform Act, 34:13A-1 to -29 ..... 86a

TABLE OF AUTHORITIES

Cases: ***Page***

FEDERAL CASES

Arizona v. California, 373 U.S. 546 (1963) 14

Baron v. Port Authority of New York and New Jersey, 968 F. Supp. 924 (S.D.N.Y. 1997) 16, 20

C.T. Hellmuth & Assocs., Inc. v. Washington Metropolitan Area Transit Auth., 414 F. Supp. 408 (D. Md. 1976) 21

Carchman v. Nash, 473 U.S. 716 (1985) 15

Cort v. Ash, 422 U.S. 66 (1975) 21

Cuyler v. Adams, 449 U.S. 433 (1981) ..... ii, 14, 15

Delaware River Joint Toll Bridge Comm'n v. Colburn, 310 U.S. 419 (1940) 14

Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. 518 (1852) 14

Pilla v. DRPA, 1999 WL 45918, (E.D. Pa. May 7, 1999) .. 19

Seattle Master Builders Ass'n. v. Pacific Northwest Electric Power & Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987) 20

Texas v. New Mexico, 462 U.S. 554 (1983) ..... ii, 14, 22

Texas v. New Mexico, 482 U.S. 124 (1987) 14

United States v. Utah, Nevada & California Stage Co., 199 U.S. 414 (1905) 15

STATE CASES

Bailey v. Port Authority of New York & New Jersey, No. 40149-92 (N.Y. Sup. Ct. May 18, 1994), *aff'd*, 627 N.Y.S.2d 921(N.Y. App. Div. 1995) 17

City of Clariton v. PLRB, 107 Pa. Commw. 561, 528 A.2d 1048 (1987) 23

Cases: Page

Delaware River & Bay Auth. v. Carello, 43 Del.Ch. 213, 222 A.2d 794 (1966) 18

FOP, Penn-Jersey Lodge 30 v. Delaware River Port Auth., 323 N.J. Super. 444, 733 A.2d 545, *cert. denied,* 162 N.J. 663, 745 A.2d 1213 (1999) 1

International Union of Operating Engineers, Local 68 v. Delaware River and Bay Auth., 147 N.J. 433, 688 A.2d 569, *cert. denied,* 522 U.S. 861 (1997) 12, 18, 19

Klickitat County v. State, 71 Wn. App. 760, 862 P.2d 629 (1993) 20

In re Local 195, 88 N.J. 393, 443 A.2d 187 (1992) 23

Malverty v. Waterfront Comm'n of New York Harbor, 71 N.Y.2d 977, 529 N.Y.S.2d 67, 524 N.E.2d 421 (1988) 16

Nardi v. Delaware River Port Auth., 88 Pa. Commw. 558, 490 A.2d 949 (1985) 17

Philadelphia Housing Auth. v. PLRB, 508 Pa. 576, 499 A.2d 294 (1985) 12, 18

Salmon for All v. Department of Fisheries, 118 Wn. 2d 270, 821 P.2d 1211 (1992) 20

CONSTITUTIONAL PROVISIONS

Compact Clause, U.S. Const. art. I § 10, cl. 3 ..... ii, 1, 2, 14

Supremacy Clause, U.S. Const. art. VI, cl. 2 ..... ii, 2

FEDERAL STATUTES

28 U.S.C. § 1257(a) 1

Act of June 14, 1932, ch. 258, 47 Stat. 308 ..... 1, 3, 4

Act of July 17, 1952, Pub. L. 573, 66 Stat. 747 4

Act of October 27, 1992, Pub. L. 102-544, 106 Stat. 3576 5

TABLE OF AUTHORITIES—*(Continued)*

Page

STATE STATUTES

N.J. Stat. Ann. § 32:3-1 4

N.J. Stat. Ann. 32:3-2 4

N.J. Stat. Ann. 32:3-4a-c 9

N.J. Stat. Ann. 32:3-5(e) 5

N.J. Stat. Ann. 32:4-6, *et seq.* 5

N.J. Stat. Ann. 34:13A-14a 3, 9

Pa. Stat. Ann. tit. 36 § 3503 ..... 4, 5

Pa. Stat. Ann. tit. 36 § 3504.1, *et seq.* 5

Pa. Stat. Ann. tit. 43 § 217.1 ..... 3, 9, 18

OTHER AUTHORITIES

Council of State Governments, *Interstate Compacts & Agencies* (1998) 4

Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution — A Study in Interstate Adjustments,* 34 Yale L.J. 685 (1925) 14

Marian E. Ridgeway, *Interstate Compacts: A Question of Federalism* (1971) 14

PETITION FOR WRIT OF CERTIORARI

The Delaware River Port Authority ("DRPA"), a bi-state compact entity created in 1932 by the Commonwealth of Pennsylvania and the State of New Jersey, and approved pursuant to the Compact Clause of the Constitution of the United States, Art. I, § 10, cl. 3, by Resolution of Congress, Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932), respectfully requests that a writ of certiorari be issued to review the decision and judgment of the Superior Court of New Jersey, Appellate Division, entered on July 22, 1999.

OPINIONS BELOW

The Opinion of the Superior Court of New Jersey, Appellate Division, is reported at *FOP, Penn-Jersey Lodge 30 v. Delaware River Port Auth.*, 323 N.J. Super. 444, 733 A.2d 545, *cert. denied,* 162 N.J. 663, 745 A.2d 1213 (1999)(A-1a).[1] The Supreme Court of New Jersey denied the DRPA's petition for certification and appeal to review the decision of the Appellate Division (A-22a) on December 7, 1999.

The decisions of the Superior Court of New Jersey, Law Division, are unreported and are set forth herein (A-16a, 18a, 20a).

JURISDICTION

The Order of the Supreme Court of New Jersey denying the DRPA's petition for certification and appeal (A-22a) is dated December 7, 1999. This Court has jurisdiction to review the judgment of the Superior Court of New Jersey, Appellate Division, by writ of certiorari pursuant to 28 U.S.C. § 1257(a). Upon motion, the time for filing this Petition for writ of certiorari was extended until May 5, 2000, by this Court's action taken on February 17, 2000.

---

1. References to 'A-' followed by a page number are to the Appendix to the Petition.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Compact Clause of the Constitution of the United States, Article I, § 10, clause 3, provides:

> No State shall, without the Consent of Congress, . . enter into any Agreement or Compact with another State . . . .

The Supremacy Clause of the Constitution of the United States, Article VI, clause 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Compact between Pennsylvania and New Jersey creating the Delaware River Port Authority, as amended (the "Compact"), is set out in Appendix F, *infra,* (A-23a-80a). Article IV(e) of the DRPA Compact provides, in relevant part:

> For the effectuation of its authorized purposes the commission is hereby granted the following powers:
>
> * * *
>
> (e) To appoint, hire or employ . . . such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties, and compensation.

(A-71a).

Article IV provides that additional powers may be imposed on the DRPA by the action of either State "concurred in by the legislation of the other":

> The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by the legislation of the other.

(A-73a).

The Resolutions of the Congress of the United States approving the Compact, Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932), as amended, are set out at Appendix F, *infra,* pp. A-23a-24a, 39a, 55a-56a, 66a.

Pennsylvania's Act 111, 43 Pa. Stat. Ann. tit. § 217.1, *et seq.* ("Act 111"), applicable only to certain "[p]olicemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth . . .," is set out at Appendix G, *infra,* at A-81a-85a.

New Jersey's binding interest arbitration procedure set forth in the New Jersey's Police and Firefighters Interest Arbitration Reform Act ("NJIARA"), N.J. Stat. Ann. 34:13A-14a, *et seq.*, is set out in Appendix H, *infra,* at A-86a-103a.

STATEMENT OF THE CASE

1. The Delaware River Port Authority.

The Delaware River Port Authority, originally the Delaware River Joint Commission,[2] a bi-state compact entity, was created in 1932 by interstate compact between Pennsylvania and New Jersey, for the purpose of developing and maintaining bridges and port facilities between the two states. 47 Stat. 308 (A-24a-25a); N.J. Stat. Ann. 32:3-2, *et seq.*; Pa. Stat. Ann. tit. 36 § 3503. Congress duly approved the DRPA Compact in 1932. Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932). (A-23a).

The DRPA is authorized, *inter alia*, to construct bridges, to build connecting roads, to provide transportation services and to engage in various economic development projects within the Delaware River Port District of Pennsylvania and New Jersey. The magnitude of its current activities is illustrated by the fact that, in 1999, approximately 50 million vehicles crossed the DRPA's major interstate bridge facilities, and bridge tolls approximating $116 million were collected to support these operations. The DRPA maintains four important Pennsylvania-New Jersey interstate bridge facilities (the Benjamin Franklin Bridge, the Walt Whitman Bridge, the Commodore Barry Bridge and the Betsy Ross Bridge). Through a wholly-owned subsidiary, the Port Authority Transit Corporation, it also operates a high-speed rail line over one of the bridges between the two states.

Interstate compact entities collectively employ thousands of persons nationwide. Congress has authorized over 190 such bi-state or interstate compacts, 34 of which involve as a party the State of New Jersey.[3] Many compacts create compact entities. Compact entities in which New Jersey participates alone employ nearly 10,000 people, and include (1) the DRPA, itself (Pennsylvania and New Jersey), (2) the Delaware River &

---

2. In 1951, New Jersey and Pennsylvania amended the Compact by enacting joint legislation which, among other things, changed the name to the "Delaware River Port Authority." Act of July 17, 1952, Pub. L. 573, 66 Stat. 747 (A-39a); N.J. Stat. Ann. § 32:3-1; Pa. Stat. Ann. tit. 36 § 3503.

3. Council of State Governments, *Interstate Compacts & Agencies* 134-156 (1998).

Bay Authority ("DRBA") (New Jersey and Delaware), (3) the Port Authority of New York and New Jersey (New Jersey and New York), and (4) the Waterfront Commission of New York Harbor (New Jersey and New York). These important bi-state compact entities are directly and substantially affected by the New Jersey decision at issue in this case.

The DRPA is authorized by its Compact, and by specifically enacted, parallel, and nearly identical legislation of both Pennsylvania and New Jersey, to appoint and maintain a police force to patrol bridges, their approaches and other Authority property. N.J. Stat. Ann. 32:4-6, *et seq.*; Pa. Stat. Ann. tit. 36 § 3504.1, *et seq.* The DRPA is governed by a Board of Commissioners which is comprised of eight members from Pennsylvania, six appointed by the Governor of Pennsylvania, in addition to Pennsylvania's Auditor General and State Treasurer, and eight members appointed by the Governor of New Jersey. Article IV(e) of the DRPA Compact grants its Board of Commissioners the power to "fix and determine [the] qualifications, duties, and compensation" of its employees and occupies the field of labor relations between the DRPA and its employees. Act of October 27, 1992, Pub. L. 102-544, 106 Stat. 3576 (A-71a); N.J. Stat. Ann. 32:3-5(e); Pa. Stat. Ann. tit. 36 § 3503.

Amendment of the DRPA Compact is governed by the Compact Clause of the Constitution and, more specifically, by Article IV of the DRPA Compact, which provides that the DRPA "shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time *by the action of either State concurred in by legislation of the other.*" (A-73a).[4] Provisions identical or nearly identical to this amendment provision, requiring legislation by one state "concurred in" by the other member of the compact, or "concurrent legislation" to amend a compact, are standard in numerous interstate compacts, involving all fifty states and the District of Columbia.[5]

---

4. Emphasis added throughout unless otherwise noted.

5. *See, e.g., Chesapeake Bay Commission Agreement* ("concurrence of the legislatures" required); *Bi-State Development Agency Compact Missouri* ("such additional powers as shall be conferred on it by the legislature of either state concurred in by the legislature of the other"); *Breaks Interstate*

Pursuant to Article IV, from time to time since the DRPA's creation, Pennsylvania and New Jersey have acted by

---

NOTES *(Continued)*

Park Compact ("concurrent action" required); *Connecticut-New York Railroad Passenger Transportation Compact* ("concurrent legislation" required); *Connecticut River Flood Control Compact* ("action of the legislature of any of said states, concurred in by the legislation of the other states" required); *Delaware Valley Urban Area Compact* ("concurrent legislation" required); *New England Interstate Water Pollution Control Compact* ("acts of a signatory state concurred in by the others" required); *New York-New Jersey Port Authority Compact* ("action of the legislature of either state concurred in by the legislature of the other" required); *Kansas City Area Transportation District and Authority Compact* ("to exercise such additional powers as shall be conferred on it by the Legislature of either State concurred in by the Legislature of the other"); *Kansas-Missouri Flood Prevention and Control Compact* ("concurrent legislation" required); *Merrimack River (Basin) Flood Control Compact* ("action of the legislature of either of said states, concurred in by the legislature of the other" required); *Mississippi River Interstate Pollution Phase-Out Compact* ("effective when concurred in by all signatories"); *New England Higher Education Compact* ("concurrent act or acts" required); *Palisades Interstate Park Compact New Jersey* ("concurrent action" required); *Portsmouth-Kittery Bridge Compact* (action "concurred in by the legislature of the other state" required); *Tahoe Regional Planning Compact* (same); *Thames River Flood Control Compact* (same); *Tri-State Agreement on the Chesapeake Bay* ("concurrence of the legislatures" required); *Tri-State Lotto Compact* ("concurrent legislation" required); *Tri-State Sanitation Compact* ("additional powers as shall be conferred upon it by the act of acts or a signatory state concurred in by the others" required); *Wabash Valley Compact* ("concurred in by the legislature of the other" required); *Washington Metropolitan Area Transit Authority Compact* ("concurred in by all of the others" required); *Waterfront Commission Compact* ("concurred in by the Legislature of the other" required); *Wheeling Creek Watershed Protection and Flood Prevention Compact* ("concurrent action" required). *See also Arkansas River Compact of 1949* ("unanimous action of the states" required); *Arkansas River Basin Compact of 1970* (same); *Bear River Compact* ("ratified by the legislatures of the signatory states" required); *Belle Fourche River Compact* ("amended by the action of the legislature of the states" required); *Colorado River Compact* ("legislative ratification" required); *Columbia River Compact* ("mutual consent and approbation of both states" required); *Delaware River and Bay Authority Compact* ("authorization by the law of both states" required); *Gulf States Marine Fisheries Compact* ("acts of their respective legislatures" required); *Interstate Insurance Receivership Compact* ("unanimous consent of the Compacting States" required); *Midwestern Higher Education Compact* ("enactment of the legislatures of all compacting states" required); *Interstate Uni-*

DRPA's creation, Pennsylvania and New Jersey have acted by adopting almost identical legislation specifically applicable to the DRPA, to delegate additional powers and to impose additional duties on the DRPA. When enacted by one of the states, such legislation typically provides that it shall not be effective until the other state enacts identical legislation. Neither the Pennsylvania legislature nor the New Jersey legislature has ever enacted legislation specifically applicable to the DRPA that requires disputes with its police officers, or any other DRPA employees, to be submitted to binding interest arbitration. In fact, Pennsylvania's interest arbitration statute is not even applicable to all Pennsylvania police departments.

The methods typically employed to amend the terms of a compact are (i) enactment of legislation by each state legislature specifically referring to the entity and addressing some aspect of the operation of the entity in question, or (ii) enactment of legislation of more general application that includes by specific definitional reference a class of entities that includes bi-state compact entities to which the legislation is made applicable. Such amendments, adopted by specific concurrent legislation, may then made be the subject of formal

---

form Agreement on Detainers ("unless the states concerned shall have entered into a supplemental agreement" required); *Interstate Wildlife Violator Compact* ("endorsement by all participating states" required); *Jennings Randolph Lake Project Compact* (ratification required); *Kansas-Nebraska Big Blue River Compact* ("unanimous action" required); *Maine-New Hampshire School District Compact* (approval required); *Midwest Interstate Low-Level Radioactive Waste Compact* (amendments effective when "enacted by all party states"); *Missouri and Kansas Metropolitan Culture District Compact* ("upon enactment"); *Nonresident Violator Compact* ("endorsement of all party jurisdictions" required); *Nurse Licensure Compact* ("enactment into the laws of all party states"); *Ohio River Valley Water Sanitation Compact* ("subsequent action of the respective legislatures of the signatory states" required); *Potomac River Compact of 1958* ("joint enactment" required); *Red River Compact* ("appropriate action of the Legislatures of all Signatory States" required); *Rio Grande Interstate Compact* ("unanimous action" required); *Southern Regional Education Compact* ("legislative enactment of said states" required); *Upper Niobrara River Compact* ("action of the Legislatures" required); *Washington Metropolitan Area Transit District* ("adopt[ion] by each of the signatories" required); *Western Regional (Higher) Education Compact* ("subsequent action of the respective legislatures" required).

approval by Resolution of Congress, pursuant to the Compact Clause. The amendment provisions of many bi-state compacts generally mirror the amendment provision of Article IV of the DRPA Compact.

This case involves the question whether "implied amendment" of a compact may be validly recognized by the state judiciary based solely on state legislation that not only does not specifically mention the bi-state compact entity, but also is concededly otherwise inapplicable to the compact entity. The holding below that a "public policy" of binding interest arbitration legislation applies to the DRPA involves judicial extrapolation of legislative intent based solely on court-perceived common "policies" of the two states that dispenses with the normal requirement of legislative intent of actual agreement by the two states to make state laws apply to a bi-state compact entity.

2. The Respondents, Fraternal Order of Police Penn-Jersey Lodge 30 and Vena.

Respondent Fraternal Order of Police Penn-Jersey Lodge 30 ("FOP") is the agent for certain of the members of the DRPA police force with respect to collective bargaining over terms and conditions of employment. Respondent, Joseph Vena, is its former First Vice-President. The DRPA voluntarily recognized the FOP as the agent of certain DRPA police officers after, and notwithstanding that, the public employee agencies of New Jersey and Pennsylvania, as well as the National Labor Relations Board, determined that neither state labor laws nor federal labor laws apply to the DRPA.

3. The Negotiations Following Expiration of the 1992 DRPA-FOP Collective Bargaining Agreement.

Notwithstanding fourteen good faith collective bargaining sessions, the DRPA and the FOP failed to reach agreement on terms to replace their 1992 Agreement, which expired by its terms on December 10, 1995. On August 21, 1996, in accordance with their express Compact powers to set employees' compensation and terms and conditions of employment and in order to assure the continuous operation of these important interstate transportation facilities, the DRPA Board of Commissioners passed a resolution ("the Resolution") fixing the

terms and conditions of employment for DRPA police officers, all of which it had previously proposed in negotiations. In accordance with the Compact, which reserves to both states the right to submit DRPA actions to their respective Governors for veto,[6] the Resolution was submitted to the Governor of New Jersey, the Honorable Christine Todd Whitman, who did not veto it, and the Resolution became effective. (A-70a).

4. Proceedings in the New Jersey Superior Court, Law Division.

Plaintiffs filed suit on August 20, 1996, in the Superior Court, Law Division, for Camden County, New Jersey, seeking to enjoin the DRPA's implementation of the Resolution, an order requiring the DRPA to return to negotiations, and an order appointing a "mediator or other neutral entity selected by the court, to assist the parties in the negotiation process."

The DRPA filed a Motion to Dismiss styled as a Motion for Summary Judgment, which the trial judge then assigned, the Honorable Samuel Supnick, denied from the bench on December 20, 1996. The court determined that Pennsylvania and New Jersey have parallel and complementary legislation, albeit "of a different nature," that gives public employees a right to freely organize and designate representatives and also to negotiate in good faith. The issue whether the DRPA could be required to submit disputes to binding interest arbitration was not initially presented.

On June 13, 1997, the FOP filed a motion for summary judgment seeking an order requiring the DRPA to submit to *binding interest arbitration* under New Jersey law, and raised the issue whether Pennsylvania's Act 111, 43 Pa. Stat. Ann. tit. § 217.1, *et seq.* and New Jersey's Police and Firefighters Interest Arbitration Reform Act, N.J. Stat. Ann. 34:13A-15, *et seq.* were sufficiently similar to constitute an amendment to the DRPA Compact or were otherwise applicable to the DRPA. On November 3, 1997, the Honorable Allan P. Vogelson determined that, although neither the Pennsylvania nor the New Jersey state statutes providing for binding arbitration apply to

6. New Jersey alone enacted legislation implementing this veto power. N.J. Stat. Ann. 32:3-4a-c.

the DRPA, the Pennsylvania and New Jersey police interest arbitration provisions are "parallel and complementary" and, therefore, constitute, in effect, an "implied amendment" to the DRPA Compact that requires DRPA police labor disputes to be submitted to binding arbitration. Judge Vogelson ordered that "if the Parties remain at impasse the Court 'can and will' order binding interest arbitration." (Appendix D, A-20a-21a).[7]

By Order dated February 17, 1998 (A-16a-17a), the trial court denied the DRPA's Motion for Reconsideration, even though it acknowledged in its January 23, 1998, bench opinion that there are many obvious, "specific" material "differences" between the Pennsylvania and New Jersey statutes in application, procedure, and legal standards governing interest arbitration. However, in construing the Compact and this state legislation to include binding arbitration, the court, in its January 23, 1998, bench opinion, gave controlling weight to its determination that New Jersey and Pennsylvania share a general "policy" of "*dispute resolution without a strike*":

> . . . [S]implistically the policy is dispute resolution without a strike, providing a vehicle by which that can be done. That's the stated policy and I so find, and I find that they are substantially similar for that purpose.
>
> While acknowledging that there are specific, but — I hesitate to use the word unimportant — recognizing that they are — there are differences that don't change the policy — do not change the policy.

5. Proceedings in the New Jersey Superior Court, Appellate Division.

On the DRPA's timely appeal, the New Jersey Superior Court, Appellate Division, affirmed, noting "the public importance of this issue" (A-7a at n. 4). The Appellate Division did not question that the DRPA Compact "is a law of the Union" or that its interpretation "is a question of federal law" (A-1a). The court noted, but did not give effect to, the DRPA Commissioners' express power under the Compact to "hire or employ" such agents and employees as it may require for the performance of its duties and to "fix and determine their

7. *See* Appendix C for Trial Court's December 19, 1997 Order.

qualifications, duties and compensation." (A-8a). The court acknowledged that "neither creator state can unilaterally impose additional duties, powers or responsibilities upon the DRPA" (A-9a), and that "[f]or single state jurisdiction to be exercised over the DRPA there must be complementary state legislation" or, in an alternative formulation, "complementary or parallel state legislation" (A-8a-9a).

The Appellate Division nonetheless departed from 75 years of bi-state compact jurisprudence and applied an unusually expansive legal standard for determining what constitutes such "complementary state legislation." The court held that to be applicable to a compact entity such as the DRPA, as an amendment to the Compact, the "parallel or complementary state legislation" of New Jersey and Pennsylvania *"need not be nearly identical" and need not even "specifically apply to the agency."* (A-9a). An amendment to an interstate compact may simply be implied, it held, so long as some common "public policy" can be discerned in both states' legislation — even though the statutory scheme of each is not even applicable to the bi-state entity in question (A-9a):

> This parallel or complementary legislation need not be nearly identical and specifically apply to the agency. *Rather, the public policy of both states*, articulated in parallel statutes that are substantially similar but do not specifically include defendant, *is applicable to a bi-state agency, although the statutory scheme of each is not.*

The Court dispensed with any requirement of express statutory language or legislative history evincing the states' specific agreement to apply particular corresponding legislation to the bi-state compact entity. (A-14a). The court held that, here, a general "policy of dispute resolution without a strike," which the courts divined in the two states' statutes, by itself sufficed to warrant application of the state "policies" to a Congressionally approved bi-state compact entity to which, admittedly, *neither* state's law was intended by the respective state legislatures to apply. In applying the standard, the New Jersey court also ignored definitive Pennsylvania Supreme Court authority that Pennsylvania's Act 111, on which it relied as the source of Pennsylvania's assumed "policy," does not, in

fact, guarantee all Pennsylvania public sector police employees the right to interest arbitration and does not apply to entities such as the DRPA. For example, binding arbitration has been held *inapplicable* to police officers of the Philadelphia Housing Authority. *See Philadelphia Housing Auth. v. PLRB*, 508 Pa. 576, 585, 499 A.2d 294, 299-301 (1985). The court acknowledged, but chose to ignore, "some differences" in scope, nature and applicability of interest arbitration for police officers, between the New Jersey and Pennsylvania statutes and relied, instead, on its broad determination that *"each state has made a policy decision in favor of public interest arbitration for police officers."* (A-12a). To characterize the states' respective statutes as "parallel," the New Jersey court was forced to minimize Pennsylvania's lack of criteria required to be considered by interest arbitrators and to dismiss New Jersey's detailed specification of criteria that arbitrators are required to consider as nothing more than "a codification of the factors any competent public interest arbitrator would apply." (A-13a-14a).

In effect, the court fashioned and applied a doctrine of "implied" interstate compact amendment, in which a court of one compact party is authorized to "imply" remedies and procedures from the general laws of the compact states without specific warrant in the legislative history and statutes of either of the creator-states.[8] In identifying the common "policy" required under its newly-fashioned standard for "parallel and complementary" legislation, the Appellate Division conflated the right to "negotiate" with the right to interest arbitration, and, in one passage,[9] identified as the controlling "common

8. The Appellate Division relied on the New Jersey Supreme Court's earlier decision in *International Union of Operating Engineers, Local 68 v. Delaware River and Bay Auth.*, 147 N.J. 433, 688 A.2d 569, *cert. denied*, 522 U.S. 861 (1997), which addressed the applicability to a New Jersey-Delaware compact entity of certain state labor legislation of Delaware and New Jersey.

9. The New Jersey courts variously formulated this "common public policy." The appellate court formulated the supposed "common policy" as (a) "public interest-arbitration for police officers," or (b) that "public employees are entitled to engage in collective bargaining." The trial court identified the "common policy" as simply "dispute resolution without a strike."

policy" the *"basic public policy of each state that their public employees are entitled to engage in collective negotiations with their employer"* (A-14a):

> Although we discern some differences in each state's legislation governing public employer-employee labor disputes, we conclude that these differences do not negate the *basic public policy of each state that their public employees are entitled to engage in collective negotiations with their employer*. The discrepancies are not so significant to render the two statutory schemes substantially dissimilar. Thus, the New Jersey statutes and the Pennsylvania statutes are complementary and parallel.

The court gave no weight to the fact that neither Pennsylvania's nor New Jersey's statute specifically applied to the DRPA and likewise gave no effect to the express Compact provision that confers on DRPA Commissioners the power to set employees' compensation. Instead, the court concluded that New Jersey courts are free to substitute for the decisions of the appointed DRPA Commissioners, exercising express Compact powers, the decisions of New Jersey court-appointed arbitrators operating under a hybrid arbitration procedure and standard to be fashioned by a state court from the two states' statutes, neither of which, admittedly, was ever intended by the respective state legislatures to apply to the DRPA.

The Supreme Court of New Jersey denied the DRPA's petition for certification without opinion by Order dated December 7, 1999 (A-22a).

REASONS FOR GRANTING THE WRIT

I. The Court Should Grant Certiorari to Settle an Important and Frequently Recurring Question of Federal Law Involving the Appropriate Legal Standard for Interpreting Compacts on Which the Courts of Pennsylvania, New Jersey, New York, and Delaware, and the Federal Courts of Pennsylvania, New York, and Maryland are Split.

This case involves the appropriate legal standard for determining when states have agreed to amend an interstate

compact by enacting parallel legislation, an important and frequently recurring question of federal law at the intersection of state and federal sovereignties.

The Compact Clause provides that "[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State . . . ." U.S. Const. art. I, § 10, cl. 3. The Court has said that "congressional consent transforms an interstate compact within [the Compact] Clause into a law of the United States." *Cuyler v. Adams,* 449 U.S. 433, 438 (1981); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518, 566 (1852) ("This compact, by the sanction of Congress, has become the law of the Union"). The interpretation of an interstate compact thus presents a federal question. *See Delaware River Joint Toll Bridge Comm'n v. Colburn,* 310 U.S. 419, 427-28 (1940).

"A compact entered is an obligation which as long as it exists, diminishes the freedom of the state to act independently in a particular sphere of interest. . . ." Marian E. Ridgeway, *Interstate Compacts, A Question of Federalism* 298 (1971). To the extent that this Court has federalized the interpretation of inter-state compacts it recognizes a further derogation of state sovereignty under the Compact Clause. The Court has observed that "by vesting in Congress the power to grant or withhold consent . . . the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative State action that might otherwise interfere with the full and free exercise of federal authority." *Cuyler,* 449 U.S. at 439-40 (citing Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution – A Study in Interstate Adjustments,* 34 Yale L.J. 685, 694-95 (1925). Thus, this Court has noted that "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Texas v. New Mexico,* 462 U.S. 554, 564 (1983); *see also Texas v. New Mexico,* 482 U.S. 124, 128 (1987); *Arizona v. California,* 373 U.S. 546, 565 (1963).

These cases treat an interstate compact as a federal statute, and thus employ ordinary rules of statutory construction in its interpretation. The most important and well-established

of those rules is that, if possible, the Court will undertake a plain-language reading of the terms of a compact. *See Cuyler,* 449 U.S. at 446-447; *see also Carchman v. Nash,* 473 U.S. 716, 724-26 (1985); *United States v. Utah, Nevada & California Stage Co.,* 199 U.S. 414, 423 (1905). The need for a uniform federal standard for determining when states have acted to amend a compact is particularly acute, because state courts (as well as federal courts) in co-creator states are routinely called upon to apply a variety of state legislation to bi-state compact entities, and, short of corrective state legislation which is doubly difficult to enact and problematic, only this Court has the power to resolve the conflicts that result.

In interpreting the requirement of Article IV of the Compact for "action of either state . . . concurred in by the legislation of the other" — the standard compact amendment provision that is employed in numerous existing interstate compacts[10] — and in adopting a standard of "amendment by implication" for bi-state compact interpretation, the New Jersey courts below have departed from well-established federal principles of statutory construction, have all but dispensed with the requirement of *agreement* by compact partners for amendment, and have devised a recipe for dangerous discord between compacting states that is potentially destructive of the utility of bi-state compacts. The New Jersey courts have not only fashioned and applied the wrong standard, but also have ordered relief that is plainly inconsistent with the express terms of the Compact.

The Court should grant the petition to resolve a conflict on the appropriate legal standard, among the state and federal courts of New Jersey, Pennsylvania, New York and Delaware, and to establish a uniform federal standard in this important field of federal compact interpretation.

A. New Jersey Decisions Conflict with Controlling Decisions of New York, Pennsylvania and Delaware State Courts on the Propriety of the "Implied Amendment" Standard.

In adopting a free-wheeling "implication" standard for defining the "parallel and complementary" state legislation

10. See footnote 5, *supra.*

requirement ("New Jersey Implied Amendment Rule"), the New Jersey courts have misconstrued and dispensed with the requirement of Article IV of the Compact, which requires *"action of either State concurred in by the legislation of the other,"* and have cemented the direct conflict of New Jersey decisions with decisions of New York, Pennsylvania, and Delaware, New Jersey's sovereign partners in other important bi-state compact entities.

1. New Jersey v. New York Law.

In sharp contrast with the New Jersey court's standard, which dispenses with the central requirement of evidence of legislative *"agreement,"* New York has held that the fact that "two States have evinced the same, or similar, public policy . . . by enacting similar . . . laws . . . is *not* sufficient . . . to render [a compact] properly amended or supplemented . . ." *Malverty v. Waterfront Comm'n of New York Harbor,* 71 N.Y.2d 977, 529 N.Y.S.2d 67, 524 N.E. 2d 421 (1988). In that case, a former licensed dockworker sought to compel the Waterfront Commission of New York Harbor to restore him to the Longshoreman's register, contending that similar legislation enacted by the two compact states, New York and New Jersey, entitled convicted state offenders such as Malverty to certain public employment opportunities. As in this case, the "parallel" New York and New Jersey employment discrimination legislation in *Malverty* did not "refer . . . to the Waterfront Commission" and contained no express statement that the state legislature intended to amend or supplement the Waterfront Commission Compact. *Malverty,* 71 N.Y.2d at 980. The New York Court refused to apply the state legislation to the Waterfront Commission solely on the basis of "the same, or similar, public policy regarding employment opportunities for former inmates . . ." *Id.*

As the district court correctly stated in *Baron v. Port Authority of New York and New Jersey,* 968 F. Supp. 924, 928 (S.D.N.Y. 1997), quoting *Malverty,* ". . . in New York it has been established that in order for a law to be applicable to [the Port Authority], the statute must expressly state that 'the legislation is amending a certain portion of the 'Compact' and

that the new law would take effect upon the enactment into law by New Jersey of legislation having an effect identical to New York's legislation.'" *Id.* Other New York state decisions are to the same effect. *Bailey v. Port Auth. of New York & New Jersey,* No. 40149-92 (N.Y. Sup. Ct. May 18, 1994), *aff'd,* 627 N.Y.S.2d 921 (N.Y. App. Div. 1995).

2. New Jersey vs. Pennsylvania Law.

New Jersey's "Implied Amendment" Rule also conflicts with applicable Pennsylvania decisions on this point. In *Nardi v. Delaware River Port Auth.,* 88 Pa. Commw. 558, 490 A.2d 949 (1985), a DRPA police officer sued the DRPA for supplementary disability benefits under Pennsylvania law. Although both the Pennsylvania law and its New Jersey counterpart were designed for a "similar purpose", *i.e.* providing disability benefits to the DRPA's police officers, the Commonwealth Court of Pennsylvania ruled that neither state's statute could be applied to the DRPA because New Jersey's and Pennsylvania's legislatures had not enacted substantially similar laws. The Pennsylvania Commonwealth Court held that even state statutes of compact states that are premised on the same public policy, and that were both made *specifically* applicable to the DRPA, were not substantially similar and could not be imposed on the bi-state entity because Pennsylvania's statute required that the DRPA "shall" provide the disability benefits, while the New Jersey statute provided that the DRPA "may" provide such benefits. As the Court said, comparing the two statutes, "[t]he Pennsylvania legislature has demonstrated that it does not concur" with the New Jersey legislature. *Nardi,* 88 Pa. Commw. at 564, 490 A.2d at 952. In contrast with New Jersey, Pennsylvania also requires precise evidence of *agreement* between the states on the application of specific statutory measures.

The conflict between Pennsylvania and New Jersey law is further aggravated in this case by the New Jersey court's misinterpretation of Pennsylvania law. New Jersey not only defines differently the applicable legal standard for "complementary or parallel" state legislation for compact amendment, it also misconstrued the scope of Pennsylvania's Act 111, the

Pennsylvania statute it found "parallel and complementary." Under Pennsylvania law, Act 111 is clearly inapplicable to the DRPA. In *Philadelphia Housing Auth. v. PLRB,* 508 Pa. 576, 499 A.2d 294 (1985) ("PHA"), the Pennsylvania Supreme Court squarely held *that Act 111, Pennsylvania's police interest arbitration law, does not even apply to all Pennsylvania domestic police departments and authorities.* Act 111 covers only "[p]olicemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth . . ." 43 Pa. Stat. Ann. tit. § 217.1. A "political subdivision" for this purpose is "any county, city, borough, incorporated town, township, school district, vocational school district and county institution district." The Pennsylvania Supreme Court there held that the Philadelphia Housing Authority was not a "political subdivision of the Commonwealth," and that PHA police are not within the scope of Act 111.

Under the same definition, the DRPA is neither the "Commonwealth" nor a "political subdivision of the Commonwealth" and its police are clearly outside the scope of Act 111. The New Jersey court thus misidentified and mischaracterized Pennsylvania's "policy," an error that exposes the danger of New Jersey's implied amendment rule that state "policies" will be misdefined by the other state's courts. As construed definitively by Pennsylvania courts, Pennsylvania legislation does not reflect an unambiguous intent universally to require binding interest arbitration for all Pennsylvania police authorities. Pennsylvania's "parallel" legislation reflects, instead, a discriminating resort to binding interest arbitration that the New Jersey courts missed.

3. New Jersey vs. Delaware Law.

The New Jersey "Implied Amendment" Rule also conflicts with the standard applied by Delaware, which is a party with New Jersey in the Delaware River & Bay Authority. In *Delaware River & Bay Auth. v. Carello,* 43 Del. Ch. 213, 222 A.2d 794 (1966), which antedated New Jersey's enactment of legislation that entitled New Jersey public employees to collective bargaining rights, the court held that "power over Authority employees . . . may not be impaired or diluted by

the unilateral action of one member to the compact." *Carello,* 222 A.2d at 799. The recent conflict between Delaware and New Jersey relating to the applicability of the states' respective laws is, once again, the result of the very decision relied by the court below, *International Union of Operating Eng'rs Local 68 v. Delaware River Bay Auth.,* 147 N.J. 433, 688 A.2d 569 (1997), *cert. denied,* 522 U.S. 861 (1997), in which the New Jersey Supreme Court, using the same new and radical technique of "implied common policy," found that the DRBA is bound by "parallel" New Jersey and Delaware law relating to the right to representation in collective bargaining negotiations. The decision below and the relatively recent *Local 68* decision illustrate the recurring nature and seriousness of the issue and the conflict.

B. The New Jersey Rule Conflicts with Applicable Federal Court Precedent in the Affected States of New York and Pennsylvania on the "Implied Amendment" Standard.

Every lower federal court that has considered New Jersey's "Implied Amendment" Rule has rejected it.

The United States District Court for the Eastern District of Pennsylvania in *Pilla v. DRPA,* 1999 WL 45918, (Newcomer J.) (E.D. Pa. May 7, 1999), recently rejected the contention that Pennsylvania's Human Relations Act and New Jersey's Law Against Discrimination are "substantially similar." The Court observed: "Plaintiff tries to salvage his claim by arguing for the more permissive "substantial similarity" test applied by some New Jersey courts," *Id.* at *4, but wisely declined to adopt the "Implied Amendment" Rule of *International Operating Eng'rs Local 68 v. Delaware River and Bay Auth., supra:*

> [P]laintiff can point to no federal court that has adopted New Jersey's more permissive view, *and this Court has not been persuaded to become the first.*

Pilla, at 4.

Because of these conflicts, future litigation in the Pennsylvania federal courts on labor and employment and other issues may subject the DRPA to one set of rules, while litigation in New Jersey state courts threatens to subject the DRPA

to another, with the prospect of forum-shopping, potential state-state and state-federal conflicts, and contradictory judicial directives with respect to the same subjects. On this federal issue, the lower federal courts are not bound by state court determinations. The state courts are not bound by decisions of the lower federal courts. Only this Court can resolve the conflict and establish a uniform federal standard.

Nor is the federal-state conflict limited to New Jersey and Pennsylvania. New York federal courts have also rejected New Jersey's "Implied Amendment" approach in favor of the conventional approach that requires "identical" legislation — with equally serious consequences for important New Jersey-New York bi-state entities such as the Port Authority of New York and New Jersey and the Waterfront Commission of New York Harbor. As the district court correctly pointed out in *Baron v. Port Authority*, 968 F. Supp. 924, 929 (S.D.N.Y. 1997), "[t]hat the two states have evinced the same, or similar, public policy regarding employment opportunities . . . by enacting similar . . . laws is not sufficient under the express terms of the Compact" to make the bi-state entity subject to the law of either state.

The adoption of New Jersey's "Implied Amendment" Rule places New Jersey in direct, recurring, and vexing conflict with both the state and federal courts in each of its neighboring states - New York, Pennsylvania and Delaware — with which New Jersey has longstanding, significant interstate compacts for interstate transportation and port facilities.

New Jersey's "Implied Amendment" Rule, moreover, creates a broader national conflict among the state courts on an important issue of federal and state relations that warrants review by this Court.[11]

---

11. The New Jersey "Implied Amendment" Rule conflicts with the legal standard adopted by state and federal courts in other jurisdictions.

For example the Washington Supreme Court, in *Salmon for All v. Department of Fisheries*, 118 Wn. 2d 270, 821 P.2d 1211, 1215-16 (1992), rejected the applicability to the Columbia River Compact of state statutes requiring open public meetings, holding that "interstate compact affairs are only subject to state law if the compact's terms agree so." *See also Klickitat County v. State*, 71 Wn. App. 760, 862 P. 2d 629, 732-33 (1993) (rejecting

II. The New Jersey Courts' "Implied Amendment" to the DRPA Compact, a "Law of the United States," Violates the Supremacy Clause by Erroneously Engrafting Binding Arbitration Procedures that Conflict with, and Subordinate, Controlling Powers Conferred by the DRPA Compact.

By adopting an "implied amendment" to the Compact, that requires the DRPA to submit labor disputes to binding arbitration, the New Jersey courts have engrafted onto the DRPA Compact arbitration provisions that directly conflict with the Compact's provision that confers exclusive power to fix employees' compensation on the DRPA's Commissioners. As a "law of the United States" and the legal charter of the DRPA, the Compact enjoys the status of a "supreme law of the land." Judges of the State of New Jersey are bound by it. They are not free loosely to infer "amendments" to it based on mere state policy similarities, or to substitute for express Compact provisions hybrid provisions that have no conventional support in the legislative intent of the respective state legislatures short of agreement to amend it.

A strong showing of specific intent by the respective legislatures to amend the Compact should be required before binding provisions of a federal law may be ignored and undermined. Particularly where, as in this case, such an implied "amendment" actually *conflicts* with an express provision of the Compact, a uniform federal standard should require (i)

---

applicability to interstate compact entity of state land use requirements).

Federal courts have generally refused to impose additional state-law duties on bi-state compact entities merely because the co-creators states have passed laws on the general subject that are similar. *Seattle Master Builders Ass'n. v. Pacific Northwest Electric Power & Conservation Planning Council,* 786 F.2d 1359, 1371 (9th Cir. 1986), *cert. denied,* 479 U.S. 1059 (1987) ("environmental impact assessment" requirement of parallel Washington and Montana environmental statutes held inapplicable to compact entity); *C.T. Hellmuth & Assocs., Inc. v. Washington Metro. Area Transit Auth.,* 414 F. Supp. 408, 409-410 (D. Md. 1976) (generally comparable statute makes information laws inapplicable to Compact entity because of settled rule that "one party may not enact legislation that would impose burdens on the compact entity absent the concurrence of the other signatories").

concurrent state legislation identifying the compact, and (ii) clear evidence of specific legislative intent and agreement on the part of both states to amend it, consistent with the standard governing compact amendment provisions. Only by requiring such conventional indicia of legislative intent can courts facing this question be certain that the states have "agreed." Cf. *Cort v. Ash*, 422 U.S. 66 (1975).

New Jersey's action in this case, judicially requiring binding interest arbitration, subordinates an express provision of federal law to state laws and constitutes a classic violation of the Supremacy Clause of the Constitution of the United States by ordering "relief inconsistent with its express terms." *See Texas v. New Mexico*, 462 U.S. 554, 564 (1983).

III. The Questions Are Important And Have Far-Reaching Practical Consequences.

This case raises a substantial, frequently recurring question under the United States Constitution and federal law, involving the proper method of amending interstate compacts and altering the basic powers of bi-state compact entities. The New Jersey courts below commented on the "public importance" of the case (A-7a), and the New Jersey decision casts a long shadow over major New Jersey, New York, Pennsylvania and Delaware bi-state compact agencies that operate important interstate transportation facilities. In one stroke, without support in legislative intent, the New Jersey courts below have removed from the DRPA Commissioners (who by Compact have this express power), and from the Governor of New Jersey (who by veto power exercises control over all such issues), control over an important component of cost and a significant segment of the budget of important interstate bridge and commuter rail facilities, and has substituted an arbitrator.

New Jersey's "implied amendment" standard invites a tide of litigation against the DRPA and other similar compact entities in the New Jersey state courts that Pennsylvania, New York, Delaware, and New Jersey legislatures never authorized. On the basis of the New Jersey "Implied Amendment" Rule, forum-shopping plaintiffs are now free to contend that several additional volumes of state statutes are applicable to

New Jersey's important bi-state entities. Potentially at stake in this case are questions of the applicability to the DRPA and other bi-state compact entities of other state laws, such as domestic zoning laws, environmental laws, navigation laws, laws governing the height, design and construction of bridges and like state legislation.

The New Jersey "Implied Amendment" Rule is fundamentally unsound. It involves the state judiciary in a drifting legislative enterprise that is not anchored in conventional legislative intent. With nothing but "public policy" for guidance, courts applying New Jersey's rule are required to fashion detailed new hybrid legislative schemes that steer through two states' statutory frameworks totally without the aid of — and even contrary to — specific legislative intent of both states. The New Jersey court's mistake in misidentifying "Pennsylvania public policy" in this case points up another flaw in the rule, which requires state court judges of one compact partner to review unfamiliar state legislation and provide a sure-footed reading of the "policy" of the other compact state.

This case provides another excellent example of the unworkability of this rule. In attempting to apply its ruling, the trial court must synthesize from conflicting statutory elements a hybrid binding arbitration procedure that, at a minimum, answers the following questions: (1) What are the subjects of arbitration? (2) What specific factors or criteria is the arbitrator(s) required to consider? (3) Must the arbitrator(s) analyze and explain in writing the evidence in terms of the relevant factors? (4) Must an arbitrator consider public policy issues such as the effect on interstate commerce. By way of example, will the issue of subcontracting be a proper subject of binding interest arbitration? Compare *In re Local 195,* 88 N.J. 393, 443 A.2d 187 (1992) (subcontracting not subject to arbitration in New Jersey) with *City of Clariton v. PLRB,* 107 Pa. Commw. 561, 528 A.2d 1048 (1987) (subcontracting held subject to arbitration in Pennsylvania). Without legislative intent from either state to point the way, which state's law will control?

New Jersey's legal standard is a substantial departure from established principles of interstate compact interpretation. It is respectfully submitted that the Court should grant

review to resolve the conflict in standards and to establish a uniform federal standard that is anchored in the legislative intent in this sensitive area of state sovereign relations.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

WILLIAM H. ROBERTS
Counsel of Record
PETER A. GOLD
SAMUEL M. FIRST

BLANK ROME COMISKY
& McCAULEY LLP
One Logan Square
Philadelphia, PA 19103
(215) 569-5632
Attorneys for Petitioner,
Delaware River
Port Authority

OF COUNSEL:

RICHARD L. BROWN
General Counsel
Delaware River Port
Authority
One Port Center
2 Riverside Drive
Camden, NJ 08101